

Decision **PROPOSED DECISION OF ALJ HYMES** (Mailed 4/17/2014)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U39E) for Approval of Demand Response Programs, Pilots and Budgets for 2012-2014.

Application 11-03-001
(Filed March 1, 2011)

And Related Matters.

Application 11-03-002
Application 11-03-003

**DECISION DENYING CALIFORNIA ENERGY STORAGE ALLIANCE'S
PETITION FOR MODIFICATION OF DECISION 12-04-045****1. Summary**

This decision denies the California Energy Storage Alliance's request to modify Decision 12-04-045 to revise the categorization of small thermal energy storage systems from mature technology to emerging technology. The petition did not comply with the Commission Rules of Practice and Procedure 16.4(b) in that it did not adequately support its requested relief including providing any new or changed facts. This proceeding is closed.

2. Procedural Background

On August 12, 2013, the California Energy Storage Alliance (CESA) filed a petition for modification of Decision (D.)12-04-045 (Petition).¹ CESA claims that

¹ D.12-04-045 approved budgets and activities for the four investor-owned utilities' demand response programs.

the Petition complies with Commission Rule 16.4(d)² because the Permanent Load Shifting (PLS) program³ was not implemented until May 2013 and the Petition relies on statements contained in Resolution E-4586, which approved the PLS program.⁴

In its Petition, CESA requests that the California Public Utilities Commission (Commission) modify D.12-04-045 by revising the categorization of small thermal energy storage systems integrated with direct expansion refrigerant based air conditioning units sized at 20 tons or less to offset on-peak energy consumption (small TES) from mature technology to emerging technology. Furthermore, CESA requests the Commission to modify D.12-04-045 in order to confirm that small TES are not eligible for incentives under the Commission's PLS program.

CESA makes the following assertions in its Petition to prove that small TES are emerging technologies rather than mature technologies:⁵

² Rule 16.4(d) states, "Except as provided in this subsection, a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition."

³ PLS involves storing electricity produced during off peak hours and using the stored energy during peak hours to support loads. (See D.12-04-045 at 146.) The PLS program, approved initially by the Commission in April 2012, provides incentives for customers to invest in PLS technology.

⁴ Resolution E-4586, approved by the Commission on May 9, 2013, implements a standardized statewide PLS Program for the territories of the Utilities. See the Utilities Response at Attachment C.)

⁵ The assertions are provided in the Petition in the Declaration of Janice Lin at 2-3.

- Small TES have only become commercially available since 2005 and remain commercially available only for commercial and industrial applications.
- Small TES are only commercially available factory-direct.
- Potential customers of small TES have no readily available mechanism to finance project costs, such as an on-bill repay programs.
- The return on investment in small TES typically exceeds 20 years, which cannot support commercially meaningful small TES market expansion in California.

CESA notes that, simultaneous to the deliberations regarding the PLS program, the Commission approved D.11-09-015, modifying the Self Generation Incentive Program (SGIP) and granting eligibility to stand-alone advanced energy storage technologies on an interim basis.⁶ CESA points out that in D.11-09-015, the Commission concluded that market transformation is promoted by incentivizing adoption of relatively new technologies that have the potential to achieve sufficient market adoption to realize substantial cost reductions through economies of scale.⁷

Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (jointly, the Utilities), and the Office of

⁶ D.11-09-015 also clarified that “if a future Commission decision in another proceeding provides comparable funding for incentives to customer-sited advanced energy storage, or a particular subcategory of TES, the incentives provided to TES (or subcategory thereof) under the SGIP should be removed as to prevent multiple incentives encouraging the same resource.” (See Utilities Response at 4 citing D.11-09-015 at 19-20.)

⁷ Petition at 3 citing D.11-09-015 at Conclusion of Law No. 3.

Ratepayer Advocates (ORA)⁸ filed protests on (respectively) September 10, 2013 and September 11, 2013.

In its response, the Utilities contend that the CESA Petition is untimely in that it was filed after the 12-month period permitted by Rule 16.4. However, if the Commission finds that the Petition is timely, the Utilities claim the Petition should be denied because the record in Application (A.) 11-03-001 et al., especially the Nemtzow testimony, is contrary to the assertions of the Petition and the Lin testimony. Furthermore, the Utilities contend that the Lin testimony does not support the relief requested by CESA. Lastly, the Utilities claim that Advice Letters (ALs), filed by the Utilities as directed by Resolution E-4586, include examples of small TES listed as types of mature TES systems eligible for PLS.⁹ The Utilities assert that the “inclusion of these technologies in the PLS program, including small [TES] integrated with air conditioning systems, reflect the fact that they are mature technologies which are commercially available.”¹⁰

ORA does not oppose the request to classify small TES as an emerging technology. However, ORA recommends that the Commission consider the impact of the classification on the PLS program and the SGIP. Furthermore ORA

⁸ At the initiation of this Petition, the Division of Ratepayer Advocates (DRA) filed the protest. In September 2013, the California Governor signed legislation renaming DRA the Office of Ratepayer Advocates (ORA). All pleadings filed under the name of DRA will be considered as filed by ORA.

⁹ Utilities Response at 10.

¹⁰ *Ibid.*

cautions the Commission to assess the combined ramifications of this Petition and the AL 40¹¹ for the SGIP.

Pursuant to Rule 16.4 (g), after receiving permission from the assigned Administrative Law Judge (ALJ), CESA filed a reply to the protests on September 23, 2013. Any relevant additional information provided by CESA in this reply is referenced in the discussion below.

3. Discussion

The Commission must determine: 1) whether the Petition is timely and, if the Petition is timely; 2) whether the Petition provides ample justification for its requested relief including the support of new or changed facts.¹² As discussed below, we find that CESA did not provide adequate justification for its requested relief and, therefore, we deny its Petition.

The Utilities contend that because the issue of mature versus emerging PLS technology was directly addressed in D.12-04-045 and Resolution E-4586, CESA has no justification for delaying its petition and the Commission should issue a summary denial.¹³

¹¹ On August 14, 2013, the California Center for Sustainable Energy (CCSE) filed an AL proposing to modify the eligibility and metering requirements and the incentive calculation methodology in the SGIP Handbook for Advanced Energy Storage technologies. CCSE also proposes to modify the eligibility requirements for emerging small TES projects so that if they meet the California Energy Commission Title 24 Building Energy Efficiency Compliance Option eligibility requirements, TES systems may qualify as a building energy savings measure and thereby meet the SGIP minimum operating efficiency and related greenhouse gas emission reduction criteria. (*See* ORA Response at 2.)

¹² Here, the Commission intends that “new” facts are those facts that would not have been available at the time the Commission deliberated D.12-04-045.

¹³ Utilities Response at 2.

In its reply to the Utilities' response, CESA states that it had initially filed a Petition for Modification of D.11-09-015 but the Commission's Docket Office rejected it because it should have been properly filed in the successor proceeding. CESA explains that, upon guidance by Commission Staff, CESA refiled the Petition in A.11-03-001 et al., noting that the policy question of the program eligibility of emerging versus mature was dealt with in both proceedings.¹⁴ Furthermore, CESA contends that since the PLS program was not implemented until May 2013 and because the Petition relies on statements from the resolution approving the PLS program, E-4586, the late submission of the Petition is justified. We find that the Petition complies with Commission Rule 16.4(d) in that the Petition provides an adequate explanation of why the petition could not have been presented within one year. We now discuss whether CESA adequately justifies its requested relief, including the indication of any new or changed facts.

CESA does not dispute that the issue of mature versus emerging was previously addressed in D.12-04-045. Rather, CESA requests to modify the language based upon alleged change of circumstances brought about by Resolution E-4586. Both the Utilities and ORA argue that CESA is only seeking a change because it is dissatisfied with the PLS incentives provided for small TES through Resolution E-4586.¹⁵ Neither party provides evidence, only conjecture, of this motive.

In its Petition, CESA describes three inter-related documents: D.12-04-045, D.11-09-015, and Resolution E-4586, and contends these documents

¹⁴ CESA reply at 3.

¹⁵ ORA Response at 1-2 and Utilities Response at 2-4.

incorrectly categorize small TES as a mature technology. In addition, CESA discusses assertions made in the Declaration of Janice Lin. CESA contends that the facts presented in the Lin testimony point “to a conclusion that small TES is not a mature technology.”¹⁶

First, we find that the facts presented by CESA are neither new nor changed since the adoption of D.12-04-045. For example, the Lin Declaration states that small TES is only commercially available today for commercial and industrial applications and is only commercially available factory direct. This was true at the time D.12-04-045 was being determined. Additionally, as the Utilities describe in their response to the Petition, the testimony sponsored by Nemtzwow “mentions some of the same points as the CESA [Petition], but does not claim that the technology is emerging.”¹⁷ We agree that the facts presented in the Lin testimony do not adequately justify the requested relief.

We find the facts presented by CESA to be insufficient to cause us to modify D.12-04-045. As the Commission similarly determined in D.09-02-032, only a persuasive indication of new facts or a major change in circumstances, which would create a strong expectation that we would make a different decision based on these facts or circumstances, would cause us to re-open the proceeding.¹⁸

It is therefore reasonable to deny the Petition for Modification of D.12-04-045 based on a lack of adequate justification, including new or changed facts.

¹⁶ CESA Petition at 5.

¹⁷ Utilities Response at 5.

¹⁸ D.09-02-032 at 9 citing D.03-10-057 and D.92058.

Furthermore, as pointed out by the Utilities,¹⁹ CESA has had four opportunities to provide the Commission with this information in order to support its contention that small TES is an emerging technology: 1) in comment to the proposed decision in A.11-03-001 et al, which included the language stating that PLS was for mature TES; 2) in protest to the Utilities ALs 4177-E, 2837-E, and 2445-E, which included a list of mature technologies; 3) in comment to E-4586; and 4) when the Utilities filed the ALs as directed by E-4586. CESA has been afforded its due process.

We note that the Commission has provided little guidance regarding the criteria for emerging or mature technologies. Hence, the assigned Commissioner in Rulemaking 12-11-005 (the Self Generation Incentive Program proceeding) may issue a ruling seeking information regarding the criteria useful for determining whether a technology is emerging or mature.

4. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on May 7, 2014 by CESA and PG&E, and reply comments were jointly filed by PG&E and SCE on May 12, 2014.

In comments to the proposed decision, CESA contends that a lack of new or changed facts is insufficient to deny its Petition because Rule 16.4(b) only requires that a petition concisely state the justification for the requested relief.²⁰ As noted by PG&E and SCE in reply comments to the proposed decision, Public

¹⁹ Utilities Response at 3.

Utilities Code Section 1708 provides broad authority to re-open Commission decisions based on a petition for modification; it also provides “discretion to reject any attempts to re-litigate issues that have already been considered and requested.”²¹

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Kelly A. Hymes is the assigned ALJ in this proceeding.

Findings of Fact

1. CESA claims that since the PLS program was not implemented until May 2013 and because the Petition relies on statements from the resolution approving the PLS program, E-4586, the late submission of the Petition is justified.

2. The facts presented by CESA are insufficient to cause us to modify D.12-04-045.

3. CESA presents no new or changed facts.

4. CESA has had four opportunities to provide the Commission with information to support its contention that small TES is an emerging technology.

Conclusions of Law

1. The Petition complies with Commission Rule 16.4(d) in that CESA provides an adequate explanation of why the petition could not have been presented within one year.

²⁰ CESA Comments to the Proposed Decision at 2.

²¹ PG&E and SCE Reply Comments to the Proposed Decision at 2 citing D.09-02-032 at 8.)

2. The Petition does not comply with Commission Rule 16.4(b) in that CESA neither adequately justifies its requested relief nor presents any new or changed facts in the proceeding.

3. CESA has been afforded its due process.

4. It is reasonable to deny CESA's petition.

O R D E R

IT IS ORDERED that:

1. The Petition for Modification of Decision 12-04-045 by the California Energy Storage Alliance is denied.

2. Application (A.) 11-03-001, A.11-03-002, and A.11-03-003 are closed.

This order is effective today.

Dated _____, at San Francisco, California.